

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl.Misc.No.12205-M of 2006

DATE OF DECISION: SEPTEMBER 11, 2006

Tara Chand and others

.....PETITIONERS

VERSUS

Ram Kumar

.....RESPONDENT

CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr.K.D.S.Hooda, Advocate,
for the petitioners.
Mr.J.S.Mehndiratta, Advocate,
for the respondent.

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The petitioners have filed this petition under Section 482 Cr.P.C for quashing the order dated 3.8.2004 passed by the SDM, Mahendergarh and the order dated 16.2.2006 passed by the Additional Sessions Judge, Narnaul, whereby the revision filed by the petitioners against the aforesaid order has been dismissed with a direction to the petitioners to remove the disputed wall constructed by them in the street.

2. I have heard the counsel for the parties and perused the impugned orders and the other material placed on record by both the parties.

3. In this case, the respondent filed an application under Section 133 Cr.P.C for removal of a wall constructed by the petitioners in the street, which was existing in front of the house of the respondent. On the said application, a conditional order was passed by the SDM and notice was issued to the petitioners to explain their position. Thereafter, the petitioners

filed a detailed reply denying the existence of the very passage itself. Subsequently, the SDM held an inquiry as contemplated under Section 138 Cr.P.C and due opportunity was provided to both the parties. The report of the B.D.P.O. in this regard was also summoned. After considering all the material and providing opportunity of hearing to both the parties, the SDM confirmed the interim order and directed the petitioners to remove the disputed wall while observing as under:-

“After hearing arguments from both the counsels, the undersigned visited and inspected the disputed place on 3.8.2004 in the presence of both the parties and found that the respondents are constructed (sic) a wall and even water has collected there and there is obstruction in the passage. This is a newly constructed wall. After perusing all the records of the file and inspecting the place I have reached to the conclusion that the passage was not left by villagers for their convenience rather it is of Panchayat for public usage. Water has stopped due to wall constructed there and there are chances of spreading disease because of the same in the village. B.D.P.O. in his report has also explained that because of wall being constructed, water of houses gets collected there. Therefore, for public convenience, there is need to remove this obstruction and nuisance. Therefore, conditional orders are made absolute and respondents are directed to remove the disputed wall.”

4. The revision filed by the petitioners against the aforesaid order has also been dismissed by the Additional Sessions Judge, Narnaul while observing as under:-

“.....a perusal of the file shows that along with the application, a number of documents in the nature of naksha abadi of moja Jhigwan along with khasra abadi of moja Jhigwan has been attached including site plan dated 16.2.2004 and affidavit by applicant-respondent Ram Kumar. So also with the reply, the revisionists have produced site plan. Copy of order dated 1.6.2004 passed by the court of Shri Krishan Kumar, the then learned Additional Civil Judge (Senior Division), Mahendergarh along with a pedigree table, copy of khasra abadi, copy of naksha abadi. Now Section 139 Cr.P.C provides that the Magistrate may for the purpose of an inquiry under Section 137 or 138 Cr.P.C direct a local investigation to be made by any such person as he thinks fit. In this case, BDPO, Kanina was appointed as local commission who visited the spot and reported about the existing state of affairs at the spot. Now with the documents produced on the file on behalf of both the parties coupled with the report of local commission, submitted by BDPO, Kanina, if during the course of inquiry, the Magistrate himself inspected the spot, then it can be said that he inspected the spot for appreciating the rival claims of the parties sought to be established by producing documents. It would not be out of context to mention here that from the file it is not made out that the revisionists besides the documents tendered by them also wanted to produce oral evidence. Under the circumstances, it cannot be held that the Magistrate passed the order without holding any inquiry as envisaged under

Section 138 Cr.P.C.”

12. In view of my foregoing discussion, there is no merit in the revision petition, the same fails and is hereby dismissed.”

5. Counsel for the petitioners wants to assail the findings given by both the Courts below with the submission that actually on the spot no passage was or is existing and the disputed portion is part of the land of the petitioners and the Courts below have wrongly directed the petitioners to remove the wall which they had constructed in their own land.

6. After perusing the impugned orders and the other material, I do not find any ground to interfere in the orders passed by both the Courts below. The Sub Divisional Magistrate as well as the Additional Sessions Judge while taking into consideration the material placed before them, in my opinion, rightly came to the conclusion that the alleged passage was existing and was being used and if the wall is not removed, then there will be a water logging in the street in front of the house of the respondent. In my opinion, in exercise of the powers conferred under Section 482 Cr.P.C in the facts and circumstances of the case, no interference can be made in the impugned orders. The proceedings under Section 133 Cr.P.C are the summary proceedings and the findings recorded with regard to the existence or non-existence of the passage will not operate as res judicata against the petitioners and it will be open for them to establish their rights before the Civil Court in the civil suit which is already pending between the parties. As far as the order of removal of the alleged wall is concerned, which was recently constructed in the street to prevent the nuisance, the same was necessary in the facts and circumstances of the case.

7. In view of the aforesaid, I do not find any illegality or infirmity

in the impugned orders passed by both the Courts below. Hence, this petition is dismissed.

September 11, 2006
vkg

(SATISH KUMAR MITTAL)
JUDGE